

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Brian C. Jones,

Debtor(s).

C/A No. 10-00724-JW

Chapter 13

JUDGMENT

Based on the findings of fact and conclusions of law set forth in the attached Order, the Court finds that Debtor does not have an interest in the accounts receivable pledged as cash collateral to Commercial Credit Group, Inc., and therefore, the accounts receivable do not constitute cash collateral in this case. Accordingly, Commercial Credit Group, Inc.'s Motion Prohibiting Use of Cash Collateral or Requiring Adequate Protection is moot.

FILED BY THE COURT
03/31/2010



Entered: 03/31/2010

Chief US Bankruptcy Court Judge
District of South Carolina

**U.S. BANKRUPTCY COURT
District of South Carolina**

Case Number: **10-00724-jw**

ORDER

The relief set forth on the following pages, for a total of 6 pages including this page, is hereby ORDERED.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

C/A No. 10-00724-JW

Brian C. Jones,

Chapter 13

ORDER

Debtor(s).

This matter comes before the Court on the Motion for Order Determining Status of Cash Collateral, and if Appropriate, Prohibiting Use of Cash Collateral or Requiring Adequate Protection (“Motion”), filed by Commercial Credit Group, Inc. (“CCG”). Brian C. Jones (“Debtor”) filed a Response to the Motion. CCG filed a Reply to Debtor’s Response. The Court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (M). Pursuant to Federal Rule of Civil Procedure 52, which is made applicable to this contested matter by Federal Rules of Bankruptcy Procedure 7052 and 9014(c), the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Debtor is the sole member of Palmetto State Construction and Contracting, LLC (“Palmetto State”), a limited liability company organized and existing pursuant to the laws of the state of South Carolina.

2. On June 27, 2007, Debtor executed a Guaranty, wherein he individually guaranteed payment of any and all present and future obligations to CCG.

3. On March 16, 2009, Debtor, in his capacity as the owner member of Palmetto State, executed a promissory note and a security agreement in favor of CCG to finance the purchase of certain equipment to be used for Palmetto State’s business. The

amount loaned by CCG to Palmetto State to purchase the equipment was \$194,040.00. CCG perfected its security interest in the equipment by filing a UCC Financing Statement with the South Carolina Secretary of State's Office and by noting its lien on the certificates of title for the equipment.

4. On June 19, 2009, Debtor, in his capacity as the owner member of Palmetto State, executed a second promissory note and security agreement in favor of CCG for the purchase of additional equipment. The amount loaned by CCG to Palmetto State in this transaction was \$286,560.00. CCG perfected its security interest in the equipment by filing a UCC Financing Statement with the South Carolina Secretary of State's Office.

5. Both the March 16, 2009 and June 19, 2009 security agreements grant CCG a security interest in "all accounts, accounts receivable, chattel paper, contract rights, documents, equipment, fixtures, general intangibles, goods, instruments, inventory, and other property, wherever located, in which [Palmetto State] now or hereafter has any right or interest and in all attachments, accessories, substitutions, replacements, replacement parts, software and software upgrades and all cash and non-cash proceeds... of and to the foregoing."

6. Debtor filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code on February 3, 2010.

7. On February 17, 2010, Debtor filed his bankruptcy schedules and statements. On Schedule B – Personal Property, Debtor lists a business checking account with Bank of America and equipment under lien to CCG by virtue of the March 16, 2009 and June 19, 2009 security agreements. Debtor listed CCG as a secured creditor on

Schedule D – Creditors Holding Secured Claims. On Schedule I – Current Income of Individual Debtor(s), Debtor listed regular monthly income from operation of business in the amount of \$5,900.00, which appears to be his primary source of personal income.¹

8. Palmetto State continues to operate and receive income from payments made by its customers on accounts receivable.

9. CCG filed the Motion on February 26, 2010.

10. Debtor filed a response to the Motion on March 4, 2010.

11. The Court held a hearing on the Motion on March 22, 2010. Although Debtor's response raised additional issues, the parties agreed to limit the issues addressed during the hearing to the issues of whether the funds generated by the accounts receivable owed to Palmetto State were property of Debtor's estate and if so, whether Debtor should be prohibited from using the property as cash collateral of CCG or be required to provide CCG with adequate protection.

CONCLUSIONS OF LAW

CCG's Motion requests that the Court determine whether the funds generated by the accounts receivables owed to Palmetto State are cash collateral. If the funds are determined to be cash collateral, CCG requests that the Court prohibit Debtor from using the cash collateral or require Debtor to provide CCG with adequate protection and order Debtor to provide an accounting for the funds received post-petition.

Cash collateral is defined by 11 U.S.C. § 363(a) as:

[C]ash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired *in which the estate and an entity other than the estate have an interest* and includes the proceeds, products, offspring, rents, or profits of property ... subject to a

¹ Debtor's only other income is a monthly contribution of \$1,400.00 from his fiancé, who lives with him.

security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

The post-petition use of cash collateral by a chapter 13 debtor is prohibited by the Bankruptcy Code, unless the secured party consents or the bankruptcy court, after notice and a hearing, authorizes the use of cash collateral upon a finding that the secured party's interest in the cash collateral is adequately protected. See 11 U.S.C. § 363(c)(2) ("The trustee may not use, sell or lease cash collateral under paragraph (1) of this subsection unless- (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section."); 11 U.S.C. § 1304 (granting the chapter 13 debtor engaged in business the rights and powers of a trustee under § 363(c), subject to the limitations on the use of cash collateral found in § 363(c)(2)).

Initially, CCG contends that the funds received as payment on accounts receivable of Palmetto State are property of Palmetto State, a limited liability company, and therefore, the funds do not constitute property of Debtor's bankruptcy estate. The determination of property rights in bankruptcy is controlled by state law. American Bankers Ins. Co. v. Maness, 101 F.3d 358, 363 (4th Cir. 1996) (citing Butner v. United States, 440 U.S. 48 (1979)). Under South Carolina law, a corporation is an entity, separate and distinct from its officers and stockholders. Dewitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co., 540 F.2d 681, 683 (4th Cir. 1976) (applying South Carolina law). "[A]lthough the debtor's interest in a corporation becomes property of the estate when a bankruptcy petition is filed, the corporation's property does not thereby become property of the shareholder's estate." In re Moore, 410 B.R. 439, 442 (Bankr. E.D.Va. 2009) (citing Kreisler v. Goldberg, 478 F.3d 209 (4th Cir. 2007)).

It appears that the parties do not dispute that legal title to the funds generated by the accounts receivable is held by Palmetto State. Rather, Debtor asserts that the Court should find that he has an equitable interest in this property because he has made a significant portion of Palmetto State's payments to CCG with his personal funds, citing In re Kingsmore, 295 B.R. 812 (Bankr. D.S.C. 2002). However, Kingsmore does not appear to be applicable to this case. In Kingsmore, the Court was asked to determine a chapter 13 debtor's rights as a defaulting purchaser under installment land contracts. The Court recognized that under South Carolina law, specifically Lewis v. Premium Investment Corp., 341 S.C. 539, 535 S.E.2d 139, 142 (2000), aff'd as modified, 351 S.C. 167, 568 S.E.2d 361 (2002), a defaulting purchaser on an installment land sale contract may have an equitable right of redemption when equity demands it. Unlike this case, the debtor in Kingsmore was a party to the contract and the contract was an installment land contract, not an equipment financing agreement. In that way, Kingsmore is distinguishable. Debtor has presented no other authority or sufficient evidence that would support a finding that he has an interest in the funds or the accounts receivable.

Based on the foregoing, the Court concludes that the funds received as payment on accounts receivable of Palmetto State are property of Palmetto State and thus are not property of Debtor's estate. Since the funds do not constitute cash collateral in this case within the context of 11 U.S.C. § 363(a), the Court finds that CCG's Motion to Prohibit Use of Cash Collateral or to Require Adequate Protection is moot.

AND IT IS SO ORDERED.